April 27, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Snider Petroleum

Date of Filing: January 27, 2006

Case No.: TEE-0032

On January 27, 2006, Snider Petroleum filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the Snider Petroleum request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.[1] The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress found that the lack of reliable information concerning the supply, demand, and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's

[1] 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

ability to anticipate and respond to potential energy shortages.[2]

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, and propane. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Certainty firms -- firms that (i) do business in four or more states or (ii) account for over five percent of the sales of any particular product sales category in a state -- are always included in the sample. A stratified random sample of other, “non-certainty” firms is also included. This stratified random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. Estimates can be used; however the basis must be consistent with the standard accounting records maintained by the firm.[3]

II. Exception Criteria

OHA has authority to grant exception relief where the reporting requirement causes a “special hardship, inequity, or unfair distribution of burdens.”[4] Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

The following examples illustrate some of the circumstances that may justify relief from the reporting requirement. We have granted exceptions where: the applicant’s financial condition is so precarious that the additional burden of meeting the DOE reporting requirements threatens its

[2] See H.R. Rep. NO. 373, 96th Cong., lst Sess., *reprinted in* 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).
[3] Form EIA-782B stipulates that the firm must make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.
[4] 42 U.S.C. § 7194(a); *see* 10 C.F.R. § 1003.25(b)(2).

continued viability;[5] the only person capable of preparing the report is ill and the firm cannot afford to hire outside help;[6] extreme or unusual circumstances disrupt a firm's activities;[7] a combination of factors renders the reporting requirement an undue burden.[8]

On the other hand, when considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Inconvenience alone does not constitute a hardship warranting relief.[9] Neither does the fact that a firm is relatively small or that it has filed reports for a number of years constitute grounds for exception relief. If firms of all sizes, both large and small, are not included, the estimates and projections generated by the EIA's statistical sample will be unreliable.[10]

III. The Snider Petroleum Application for Exception

Snider Petroleum filed its exception application in January 2006.[11] Based upon a review of the application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Snider Petroleum to give the firm an opportunity

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[5] *Mico Oil Co.*, 23 DOE ¶ 81,015 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,026 (1987) (firm in bankruptcy).

[6] *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,023 (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two months relief granted when computer operator broke wrist).

[7] *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,205 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three months where disruptions caused by installation of a new computer system left firm's records inaccessible).

[8] *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (exception relief for 10 months was granted where personnel shortages, financial difficulties, and administrative problems resulted from the long illness and death of a partner).

[9] *Glenn W. Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

[10] *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

[11] Snider Petroleum Application for Exception, submitted to OHA on January 27, 2006.

to discuss the request.[12] In a March 10, 2006 letter, Snider Petroleum supplemented its application.[13]

Snider Petroleum is a privately-owned seller of petroleum products headquartered in Sumner, Washington. Snider Petroleum states that they are required to file more often than some other firms and their long term participation has caused an undue burden. Snider Petroleum states that the firm has completed the form for much of the past four years.[14]

In the course of considering the Snider Petroleum application, we also contacted a representative from the Energy Information Administration (EIA) and obtained the following information. As a non-certainty firm, Snider Petroleum was randomly selected to report on Sample 12, from October 1996 to February 1999; Sample 14, from January 2002 to July 2004; and Sample 15, from August 2004 to the present.[15] Snider was not included in Sample 13.[16]

IV. Analysis

The Form EIA-782B reporting burden is not onerous. Form EIA-782B requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take approximately two and one-half hours per month for a firm to fill out EIA-782B.[17] The burden of this requirement can be substantially reduced by the use of estimates.[18]

Snider Petroleum's sole argument -- that EIA's sampling results in some non-certainty firms reporting more frequently than others -- does not demonstrate a serious hardship, gross inequity or unfair distribution of burdens.[19] The EIA employs stratified random sample

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[12] Letter from Ronald Hester, OHA to Mr. Steve Snider, Snider Petroleum, dated February 27, 2006.
[13] Letter from Steve Snider, Snider Petroleum to Ronald Hester, OHA, dated March 10, 2006.
[14] *Id.*
[15] Conversation between Ronald Hester, OHA and Tammy Heppner, EIA on January 27, 2006.
[16] *Id.*
[17] *See* Section 10 of General Instructions to Form EIA- 782B.
[18] *See* Section 7 of the General Instructions to Form EIA-782B.
[19] *See Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included, the estimates and

designs[20] in which larger non-certainty firms are more frequently sampled because of the importance of their data. Moreover, the EIA may require the same firm, regardless of size, to participate in multiple EIA surveys. Non-certainty firms -- regardless of size -- are generally not included in more than three consecutive samples. Accordingly, the fact that the firm is now reporting on its second consecutive sample does not mean that the firm is uniquely disadvantaged by the reporting requirement.

As the foregoing indicates the firm has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

IT IS THEREFORE ORDERED THAT:

(1) The Application for Exception filed by Snider Petroleum, Case No. TEE-0032, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

George B. Breznay
Director
Office of Hearings and Appeals

Date:April 27, 2006

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projections generated by the EIA's statistical sample will be unreliable); *see also Taylor Oil Co.*, 27 DOE ¶ 81,010 (2000) (relief denied where the firm had participated in filing the reports for many years).

[20] Letter from Tammy Heppner, EIA to Mr. Steve Snider, Snider Petroleum, dated January 12, 2006.